the injury should be established by an eye-witness other than the insured. *Held,* such a provision is void, because it attempts to govern the law of evidence. *Rollins* v. *Business Men's Acc. Ass'n* (St. Louis Ct. of App., Mo. 1920) 220 S. W. 1022.

An agreement wherein the parties stipulate concerning the manner of establishing a cause of action in such a way as to require direct proof where circumstantial evidence would otherwise be sufficient is of no force. *Utter* v. *Travellers' Ins. Co.* (1887) 65 Mich. 545, 32 N. W. 812. When, however, the parties contract that no action shall be maintained after the expiration of a certain time, the stipulation is valid. *Cray* v. *Hartford Fire Ins. Co.* (C. C. 1848) 1 Blatchf. 280. The distinction seems to be that in the former case, the agreement goes to the manner of proof at the trial and governs the rules of evidence, whereas in the latter case, the agreements are by way of conditions which are satisfied before or at the time of filing suit, and hence have nothing to do with the laws of evidence. The court in the instant case pointed out (p. 1026) that the provision is not one which attempts to fix a condition under which the insurer "will become liable for a certain amount or for no amount but is attempting to fix the amount of evidence or the character of evidence which must be shown before such a condition can be pronounced as having existed." When the existence of a claim is sought to be established by methods provided for in an agreement as in the instant case, not only do the parties attempt, in effect, to be a law unto themselves, but they might stipulate for absurd provisions, such as to require a witness with red hair or blue eyes, and the like.

EVIDENCE—MOTION TO DISCHARGE IN CRIMINAL CASES—WAIVER BY INTRODUCTION OF EVIDENCE.—The defendant, on trial for a statutory offense, moved to be discharged at the conclusion of the state's evidence. The motion was denied and after having taken an exception, the defendant proceeded to introduce evidence. *Held,* the error, if any, in denying the defendant's motion, was waived by the introduction of evidence in his behalf. *Wukina* v. *State* (Ind. 1920) 128 N. E. 435.

The instant case is in accord wtih the prevailing rule on this point. *Hodson* v. *United States* (C. C. A. 1918) 250 Fed. 421; *State* v. *Chafin* (1916) 78 W. Va. 140, 88 S. E. 657; *People* v. *Slaughter* (1913) 182 Ill. App. 612. That the defendant's evidence may cure defects in the government's proof is a strong reason for urging this rule. The opposite view is maintained on the ground that this evidence should not be used against the defendant since he had the right to have his motion decided without it. *State* v. *Bacheller* (1916) 89 N. J. L. 433, 98 Atl. 829. The difficulty with the rule of the instant case is that it comes dangerously near to compelling the defendant to prove his innocence before the state has really made a case from which his guilt could be inferred, or else to forego at his peril a defense on the merits, if he wishes to test the accuracy of the refusal of his motion to dismiss. This rule also permits isolated pieces of the defendant's testimony to be used against him to cure defects in the case for the prosecution. See *People* v. *Crane* (1917) 34 Cal. App. 760, 168 Pac. 1055. And yet the rule in the *Bacheller* case, if followed to its logical conclusion, might lead to this undesirable situation: a criminal whose guilt had been clearly, though perhaps inadvertently, proved by his evidence, would have to be discharged because the state had failed in the first instance to make out a sufficient case against him. The failure of justice that would result in such a case justifies the majority view.

EVIDENCE—UNLAWFUL SEIZURE—FOURTH AMENDMENT.—A government revenue

agent fraudulently and falsely represented that he had authority to search for and seize a certain book. Relying on this representation, the defendant handed him the book. The agent gave the book to the United States attorney. On a motion by the defendant under an order that the United States attorney should show cause why the book should not be returned, *held,* the protection afforded by the Fourth Amendment against unreasonable searches and seizures extends only to cases involving force, and not to those where the evidence is obtained by fraud or trick. The motion was denied. *United States* v. *Maresca* (D. C., N. Y., 1920) 266 Fed. 713.

The present state and former federal rule holds evidence admissible even though procured by unconstitutional means. *People* v. *McDonald* (1917) 177 App. Div. 806, 165 N. Y. Supp. 41; *Ripper* v. *United States* (C. C. A. 1910) 178 Fed. 24; *contra, State* v. *Sheridan* (1903) 121 Iowa 164, 96 N. W. 730; *United States* v. *Wong Quong Wong* (D. C. 1899) 94 Fed. 832; see (1920) 20 COLUMBIA LAW REV. 484. The argument for this rule emphasizes the public interest in discovering the truth, and asserts that an action against the individual wrongdoer comprises the constitutional protection. The present federal rule renders such evidence inadmissible where the defendant has made timely application for its return. *Silverthorne Lumber Co.* v. *United States* (1920) 251 U. S. 385, 40 Sup. Ct. 182; *Weeks* v. *United States* (1914) 232 U. S. 383, 34 Sup. Ct. 341. This view is preferable, for otherwise the constitutional provisions are emasculated. The amendment refers only to forcible searches and seizures, and although its object was to restrain official despotism, still to interpret its language to exclude the use of fraud in the detection of crime is unwarranted and would seriously impair the enforcement of the law. In the instant case, however, sufficient elements of force are present to render the amendment applicable. The representation of official authority clearly expressed an intention to use force if necessary. In analogous cases of false imprisonment, where one submits to restraint because of a reasonable apprehension of the use of force, the result is the same as if force had actually been used. *Hebrew* v. *Pulis* (1906) 73 N. J. L. 621, 64 Atl. 121; *Martin* v. *Houck* (1906) 141 N. C. 317, 54 S. E. 291. No reason appears why a different criterion of force should be applied to the instant case. *United States* v. *Abrams* (D. C. 1916) 230 Fed. 313; *contra, State* v. *Arthur* (1905) 129 Iowa 235, 105 N. W. 422.

MARRIAGE—ANNULMENT—JEST.—The plaintiff had in jest performed a marriage ceremony with the defendant. Although a marriage license had been obtained and none of the necessary details had been omitted, the parties had no intention to enter a matrimonial contract or to assume the rights and duties of the status. There was no subsequent cohabitation. *Held,* the marriage could be annulled in equity. *Crouch* v. *Wartenberg* (W. Va. 1920) 104 S. E. 117.

Courts of equity have early taken jurisdiction of marriages contracted in this fashion. *McClurg* v. *Terry* (1870) 21 N. J. Eq. 225. The rule in the few cases that have arisen has been to consider these marriages as voidable rather than void *ab initio.* As a result, no collateral attack upon them has been permitted. *Barker* v. *Barker* (1914) 88 Misc. 300, 151 N. Y. Supp. 811, *aff'd.* 182 App. Div. 929, 168 N. Y. Supp. 1101 (later annulled by direct proceedings in *Dorgeloh* v. *Murtha* (1915) 92 Misc. 279, 156 N. Y. Supp. 181). And subsequent cohabitation has been treated as a ratification. See *Dorgeloh* v. *Murtha, supra,* 285. This result finds little support in logic and hardly more in policy. Intent to enter the marital relation and not cohabitation generally establishes the validity of a marriage. *Franklin* v. *Franklin* (1891) 154 Mass. 515, 28 N. E. 681. Thus, in the absence of statute, the marriage of an insane person is void *ab initio. Estate of Gregorson* (1911) 160 Cal. 21,